

REMARKS

Formal Matters

Claims 13-38 and 40-54 are pending after entry of the amendments set forth herein.

Claims 13-38 and 40-54 were examined. Claims 13-38 and 40-54 were rejected.

Applicants respectfully request reconsideration of the application in view of the amendments and remarks made herein.

No new matter has been added.

The Office Action

Claims Rejected on Ground of Nonstatutory Obviousness Type Double Patenting – U.S. Patent No. 6,199,556 in view of Deckman et al.

In the Official Action of march 7, 2008, claims 13, 24-28, 31-34 and 36-38 and 40-54 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 8-20 of U.S. Patent No. 6,199,556 in view of Deckman et al., U.S. Patent No. 5,984,867.

In the “Response to Amendment” section on page 6 of the Office Action dated March 7, 2008, the Examiner indicated that he noted “applicant’s remark with respect to the Terminal Disclaimer”. However, the Examiner has maintained the current ground of rejection even after receiving a terminal disclaimer with regard to U.S. Patent No. 6,199,556. This inaction on the part of the Examiner is not understood.

In view of the terminal disclaimer with regard to U.S. Patent No. 6,199,556 that was submitted in the previous amendment on November 26, 2007, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 13, 24-28, 31-34, 36-38 and 40-54 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 8-20 of U.S. Patent No. 6,199,556 in view of Deckman et al., U.S. Patent No. 5,984,867, as being moot.

Claims Rejected on Ground of Nonstatutory Obviousness Type Double Patenting – U.S. Patent No. 6,736,774 in view of Deckman et al.

Claims 13, 24-28, 31-34, 36-38 and 40-54 were rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,736,774 in view of Deckman et al., U.S. Patent No. 5,984,867.

In the “Response to Amendment” section on page 6 of the Office Action dated March 7, 2008, the Examiner indicated that he noted “applicant’s remark with respect to the Terminal Disclaimer”. However, the Examiner has maintained the current ground of rejection even after receiving a terminal disclaimer with regard to U.S. Patent No. 6,736,774. This inaction on the part of the Examiner is not understood.

In view of the terminal disclaimer with regard to U.S. Patent No. 6,736,774 that was submitted in the previous amendment on November 26, 2007, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 13, 24-28, 31-34, 36-38 and 40-54 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,736,744 in view of Deckman et al., U.S. Patent No. 5,984,867, as being moot.

Claims Rejected Under 35 U.S.C. Section 102(e) (Deckman et al.)

Claims 13-28, 31-38 and 40-54 were rejected under 35 U.S.C. Section 102(e) as being anticipated by Deckman et al., U.S. Patent No. 5,984,867. The Examiner asserted that Deckman et al. disclose a main body 22, 102 configured to rest against the frontal body of a patient and a lifting arm 40 rotatably mounted to the main body, as set forth in column 4, lines 46-50. Applicants respectfully traverse. Column 4, lines 46-50 of Deckman et al. disclose: “The blade element 42 also is preferably rotatable relative to the link member 74 about an axis passing thought eh mounting pin 90 to positively engage and evenly distribute the load on the ribs and soft tissue.” Accordingly, it is noted that Deckman et al. discloses nothing about a main body 20, 122 or a lifting arm 40 at column 4, lines 46-50, contrary to the Examiner’s assertions.

Furthermore, it is respectfully submitted that reference numeral 102 of Deckman et al. does not refer to the “main body” of the retractor as asserted by the Examiner, but rather refers to a stabilizing foot that is coupled to a column 104, see column 5, lines 55-60. The column 104 is movably engaged with a beam 110 that is fixed relative to blade element 42, see Figs. 5 and 6.

Applicants further respectfully submit that Deckman et al. fails to teach or suggest, and is also not adapted to engage a lower surface of edge of the lowest rib of the patient in order to perform the lifting function. As shown in Fig. 12, Deckman et al. engages the blades between adjacent ribs of a patient. The retractor of Deckman et al. is not configured to engage the lowermost rib from a lower surface or edge of the rib and lift it. Nor would this be possible, since the oppositely facing blade on the opposing arm of Deckman et al. would then be facing the abdomen and would have no rib structure to engage.

Claims 13, 31, 37, 38, 40-42, 46-47 and 51 have been amended above to emphasize this distinction. Support for these amendments can be found in Figs. 2-7 and the supporting description thereof in the specification.

In view of the above amendments and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 13-28, 31-38 and 40-54 under 35 U.S.C. Section 102(e) as being anticipated by Deckman et al., U.S. Patent No. 5,984,867, as being inappropriate.

Claims Rejected Under 35 U.S.C. Section 103(a) (Deckman et al. in view of Asrican)

Claims 29-30 were rejected under 35 U.S.C. Section 103(a) as being unpatentable over Deckman et al., U.S. Patent No. 5,984,867 in view of Asrican, U.S. Patent No. 3,680,546. It is respectfully submitted that Asrican fails to make up for the deficiencies of Deckman et al. in meeting all of the recitations of claim 13. Accordingly, since claims 29-30 depend from claim 13, it is respectfully submitted that claims 29-30 are allowable for at least the same reasons provided above with regard to claim 13.

Accordingly, in view of the above amendment of claim 13 and remarks, the Examiner is respectfully requested to reconsider and withdraw the rejection of claims 29-30 under 35 U.S.C. Section 103(a) as being unpatentable over Deckman et al., U.S. Patent No. 5,984,867 in view of Asrican, U.S. Patent No. 3,680,546, as being inappropriate.

Conclusion

Applicants submit that all of the claims are in condition for allowance, which action is requested. If the Examiner finds that a telephone conference would expedite the prosecution of this application, please telephone the undersigned at the number provided.

Atty Dkt. No.: GUID-008CON2

USSN: 10/670,152

The Commissioner is hereby authorized to charge any underpayment of fees associated with this communication, including any necessary fees for extensions of time, or credit any overpayment to Deposit Account No. 50-2653, order number GUID-008CON2.

Respectfully submitted,

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